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# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1376

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD

and

INSURANCE WORKERS INTERNATIONAL UNION,
AFL-CIO, *Respondents.*

## Brief for Respondent Insurance Workers International Union, AFL-CIO, in Opposition to Petition for a Writ of Certiorari

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## COUNTERSTATEMENT OF QUESTION PRESENTED

The only question presented is whether upon this particular record, the National Labor Relations Board ("Board") acted within its statutory authority and discretion in (1) finding appropriate a bargaining unit legally indistinguishable from units which had been invariably held appropriate in the past, and (2) concluding that a Board representation election and

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certification are not vitiated, and Petitioner's refusal to bargain collectively in good faith was not justified, by a Union statement that the employees would have no obligation to pay Union dues and initiation fees unless and until the Union would have negotiated a collective bargaining agreement with the employer.

## ARGUMENT

### THE PETITION SHOULD BE DENIED BECAUSE THE JUDGMENT BELOW RESTS UPON THE UNIQUE FACTS OF THIS PARTICULAR CASE AND PRESENTS NOTHING MERITING REVIEW BY THIS COURT.

#### I. The Decisions Below That This Specific Bargaining Unit Is Appropriate Rest on the Unique Facts of This Particular Case.

This Petition ("Pet.") seeks review by this Court of one particular finding of appropriate bargaining unit by the Board, sustained unanimously by the Court below. Obviously, as the Petition itself recognizes, the discussion of a finding of appropriate bargaining unit "must occur in a largely factual context" (Pet. 27). The particular facts upon which the Board principally relied—and the Petition does not question the adequacy of the particular record in demonstrating those facts—appear in the Decision of the Regional Director (Pet. 26a-30a). In unanimously affirming the Board's finding of appropriate bargaining unit, the Court below expressly relied upon those facts (Pet. 5a-9a).

To capsulize, the bargaining unit found appropriate in this case is that of all the Petitioner's office clerical employees at its Grosse Pointe, Michigan District Office. The record amply demonstrates the principal facts upon which the decisions below relied: The

Grosse Pointe District Office is a separate and distinct geographic entity in Petitioner's operations; it operates with significant autonomy as a separate and distinct administrative entity in Petitioner's operations with respect particularly to the office clerical employees involved in this particular case; Petitioner's District Offices are the basic units of Petitioner's operations which deal with its actual and potential customers and the public; and the District Office is a separate and distinct administrative entity, with its own functions, powers and management, in Petitioner's organization and administration of its business. When such facts are shown upon the record of a particular case, the decision has invariably been to the effect that such a unit is appropriate, with respect to clerical and related employees and the insurance industry in particular, as well as employees subject to the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.* ("Act") in general. Exemplifying such decisions are *Continental Insurance Co.* v. *N.L.R.B.*, 409 F.2d 727 (2nd Cir. 1969), *cert. denied*, 396 U.S. 902 (1969); *N.L.R.B.* v. *Western and Southern Life Insurance Company*, 391 F.2d 119 (3rd Cir. 1968), *cert. denied*, 393 U.S. 978 (1968); *N.L.R.B.* v. *Quaker City Life Ins. Co.*, 319 F.2d 690 (4th Cir. 1963); *State Farm Mutual Automobile Ins. Co.* v. *N.L.R.B.*, 411 F.2d 356 (7th Cir. 1969), *cert. denied*, 396 U.S. 832 (1969); *Empire Mutual Insurance Co.*, 195 NLRB 284 (1972); *Equitable Life Assurance Society of the United States*, 192 NLRB 544 (1971); *Fireman's Fund Insurance Co.* 173 NLRB 982 (1968).

There is no more to this case than a Board determination of an appropriate bargaining unit upon one

specific case record, a finding legally indistinguishable from numerous findings in the same industry and other anologous circumstances—a finding plainly within the range of discretion afforded the Board, and plainly not arbitrary or capricious. It is small wonder that Petitioner must acknowledge that no one has previously had the temerity to present to this Court the particular complaint about an appropriate bargaining unit upon which this particular Petition is founded: "We have found no case presented to this Court in which the central legal issue has been the size of the proposed unit, either absolutely or comparatively" (Pet. 28). There is nothing in that circumscribed, particularized question which warrants consideration by this Court.

**II. The Decision on Lack of Obligation To Pay Union Dues or Initiation Fees Until A Collective Bargaining Agreement Is Executed Is Admittedly Consistent With This Court's Decision in Savair and With All Pertinent Decisions.**

In *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270 (1973) ("*Savair*"), this Court drew a clear line between waivers of dues and initiation fees offered only to those employees who signed Union cards *prior* to the Board representation election and such waivers offered without regard to the date of the Board representation election. While this Court held that the former were inappropriate during a Board election campaign, it expressly recognized that "unions have a valid interest in waiving the initiation fee when the union has not yet been chosen as a bargaining representative," an interest which "can be preserved as well by waiver of initiation fees available not only to those who have signed up with the union before an

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election but also to those who join after the election." *Id.* at 274, n. 4, final paragraph.[1]

Unquestionably, the alleged Union statements in this case were not bound to the date of the Board representation election, but were to the effect that the employees would not be asked to pay the Union initiation fees and dues unless and until a collective bargaining agreement was executed therafter (Pet. 19).[2] In holding that the claimed Union conduct in this case therefore did not justify setting aside the results of the Board representation election and did not justify Petitioner's refusal to bargain with the Union, the decisions below were faithful to the teaching of this Court in *Savair*.

Petitioner does not contend otherwise; it requests that "the Court should reexamine" the legal principles it set out in *Savair* (Pet. 26). Explicitly Petitioner acknowledges that the decisions below are consistent with many other Court of Appeals and Board decisions

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[1] The Court continued, "The limitation imposed by the union in this case—to those joining before the election—is necessary only because it serves the additional purpose of affecting the Union organizational campaign and the election." The Court itself added the emphasis in directing attention to the fact that the question accepted for review in *Savair* was "whether the 'Board properly concluded that a union's offer to waive initiation fees for all employees who sign union authorization cards *before a Board representation election*, if the union wins the election, does not tend to interfere with employee free choice in the election.'" *Id.* at initial paragraph.

[2] This is taking Petitioner's allegations as true; there was no evidentiary record on this issue which was plainly an afterthought (Pet. 4, n.5). Even if there were some *Savair* issue which would theoretically justify consideration by this Court, therefore, this case would not be an appropriate vehicle for such consideration because of the lack of factual record on this issue.

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(Pet. 18-26). Petitioner recognizes in addition that a number of petitions for writs of certiorari have already sought to have this Court review issues purportedly arising from *Savair;* and such petitions have been uniformly denied (Pet. 24, n. 25). Plainly, this case provides no occasion for any further discussion of legal principles which were clearly explicated in *Savair,* and have produced no confusion or conflict, but rather consistency and clarity of Board and judicial decision.

## CONCLUSION

The judgment below rests on the unique facts of this particular case. It is admittedly in accord with all judicial and administrative authority which relates to either the appropriate bargaining unit or the initiation fee-dues waiver issue. *A fortiori,* there is no conflict among the Circuits.

There is no good reason for granting the Petition. There is every good reason for denying it summarily, so that the collective bargaining which has been so long delayed may at last commence; and the individual employees within this particular appropriate bargaining unit may finally enjoy the individual rights safeguarded for them in the Act.

Respectfully submitted,

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